

154 FERC ¶ 61,219  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Gulf South Pipeline Company, LP

Docket Nos. CP13-91-001  
CP13-92-001  
CP13-93-001

ORDER DENYING REQUEST FOR REHEARING

(Issued March 17, 2016)

1. On December 19, 2013, we issued an order denying Gulf South Pipeline Company, LP (Gulf South) authority to abandon pipeline facilities in Louisiana, Mississippi, and Texas by sale to Gulf South-affiliated companies.<sup>1</sup> The December 19 Order also dismissed Gulf South's request that upon abandonment by sale to the respective Gulf South affiliates, we find that the facilities would be exempt from our jurisdiction pursuant to section 1(c) of the Natural Gas Act (NGA) as "Hinshaw" pipeline facilities.<sup>2</sup> On January 21, 2014, Gulf South filed a request for rehearing of the December 19 Order. As discussed below, we will deny the request for rehearing.

**I. Background**

2. Gulf South owns and operates approximately 7,241 miles of pipeline facilities in Texas, Louisiana, Mississippi, Alabama, and Florida. On March 1, 2013, Gulf South

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<sup>1</sup> *Gulf South Pipeline Co., L.P.*, 145 FERC ¶ 61,236 (2013) (December 19 Order).

<sup>2</sup> Pursuant to section 1(c) of the NGA, the provisions of the NGA do not apply to "any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission." 15 U.S.C. § 717(c) (2012).

filed three separate applications to abandon by sale discrete portions of its pipeline facilities in Louisiana, Mississippi, and Texas to Boardwalk Louisiana Intrastate Pipeline Company (Boardwalk Louisiana), Boardwalk Mississippi Intrastate Pipeline Company (Boardwalk Mississippi), and Boardwalk Texas Intrastate Pipeline Company (Boardwalk Texas), respectively.<sup>3</sup> In the subject applications, Gulf South proposed to abandon facilities comprising approximately 25 percent of Gulf South's overall pipeline mileage which it alleged were distribution-type and gathering facilities.

3. In support of its abandonment applications, Gulf South asserted that the facilities it proposed to abandon are not integral to its open-access interstate transportation service.<sup>4</sup> Rather, Gulf South claimed that these facilities are primarily small-diameter, low-pressure pipelines that were designed to transport local gas production to local intrastate markets, and are now used primarily to facilitate receipts and deliveries of natural gas on behalf of specific local customers. It also alleged that the facilities are no longer integral to interstate transportation service because they are underutilized by shippers currently holding contracts for capacity, as demonstrated by the fact that, despite representing approximately 25 percent of Gulf South's total pipeline mileage, those facilities are utilized by shippers to transport less than two percent of Gulf South's system throughput. Gulf South claimed that shippers on the facilities would not be negatively impacted by the proposed abandonment because they would continue to receive the same quality of service at the same rates from the Boardwalk Intrastates for the remainder of the primary terms of their existing contracts, thus being kept economically whole for that period of time.<sup>5</sup>

4. Gulf South maintained its proposed abandonments are justified in order to eliminate a subsidy currently borne by its mainline customers whose services do not rely on or use the facilities it seeks to abandon, and to better align cost responsibility with cost causation.<sup>6</sup> Gulf South alleged that this subsidy is demonstrated by the fact that in each applicable rate zone, throughput in relation to pipeline mileage is disproportionately lower on the facilities that Gulf South proposed to abandon than on Gulf South's upstream mainline facilities, while the same recourse rates apply to all services within the zone. Gulf South also contended that because the hypothetical stand-alone rates it

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<sup>3</sup> This order refers to Boardwalk Louisiana, Boardwalk Mississippi, and Boardwalk Texas collectively as the "Boardwalk Intrastates."

<sup>4</sup> Gulf South's March 1, 2013 Applications, Docket Nos. CP13-91-000, CP13-92-000, and CP13-93-000 at 7.

<sup>5</sup> *Id.* at 29.

<sup>6</sup> Gulf South's Application, Docket No. CP13-92-000 at 31.

calculated for each set of facilities it seeks to abandon are greater than the maximum recourse rate in each of its zones, it is evident that transportation on the subject facilities is heavily subsidized by shippers that do not use the facilities.<sup>7</sup>

5. Finally, Gulf South claimed that its actual return on equity is substantially below its Commission-approved rate of 12.25 percent.<sup>8</sup> It maintained that the proposed abandonments would allow Gulf South to streamline its system and provide it with an improved opportunity to earn a reasonable rate of return, which it claims is consistent with principles outlined by the U.S. Supreme Court in *FPC v. Hope Natural Gas Company (Hope)*.<sup>9</sup>

6. Eleven parties, including shippers and marketers, as well as industrial, residential, municipal, and commercial users of natural gas, filed protests to Gulf South's applications for abandonment. The protestors opposed abandonment of the facilities and alleged that the Boardwalk Intrastates' services and rates would not replicate Gulf South's existing services and rates.

## **II. Summary of December 19, 2013 Order**

7. The December 19 Order denied abandonment of the certificated facilities and services, finding that Gulf South did not meet its burden of demonstrating that the public interest "will in no way be disserved" by abandonment.<sup>10</sup>

8. We found that despite the subject facilities' relatively low operating pressures and small diameters, they are nonetheless a part of Gulf South's jurisdictional interstate pipeline system, and have been continuously used to render interstate service under Gulf South's open-access tariff for customers on its system.<sup>11</sup> We concluded that the negative impact of the proposed abandonment on Gulf South's customers wishing to continue

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<sup>7</sup> See, e.g., Gulf South's Application, Docket No. CP13-91-000 at 25.

<sup>8</sup> *Id.* (citing *Koch Gateway Pipeline Co.*, 84 FERC ¶ 61,143 (approving a settlement which provided a 12.25 percent rate of return on equity)). Gulf South was formerly Koch Gateway Pipeline Company.

<sup>9</sup> See, e.g., Gulf South's Application, Docket No. CP13-91-000 at 26 (citing *Hope*, 320 U.S. 591 (1944)).

<sup>10</sup> December 19 Order at P 45 (citing *Michigan Consolidated Gas Co. v. FPC*, 283 F.2d 204, 214 (1960) (*Michigan Consolidated*)).

<sup>11</sup> December 19 Order at P 55.

receiving their contracted-for interstate transportation services through the facilities would be significant and outweighed any claimed benefits.<sup>12</sup>

9. We disagreed with Gulf South's assertions that current utilization levels of the facilities support its abandonment proposals.<sup>13</sup> Here, the record showed that shippers hold firm entitlements on the facilities under Rate Schedules NNS (no-notice service) and FTS (firm transportation service) and under the small customer options under those rate schedules. While Gulf South emphasized that actual gas flows over the facilities are lower than the total contracted-for maximum daily quantities (MDQ), we found that the contract MDQ levels are more germane to our analysis because they represent the maximum amount of capacity Gulf South must make available for the shippers to use on any given day in order to meet their customers' peak demands.

10. We found that Gulf South did not support its claim that shippers would receive the same quality of service and rates from the Boardwalk Intrastates.<sup>14</sup> We noted that the Boardwalk Intrastates would provide service that is no longer subject to full Commission jurisdiction and its open-access protections. Specifically, we found that loss of no-notice service as currently provided under Gulf South's Rate Schedule NNS would be particularly harmful to local distribution companies (LDCs) serving core residential and commercial customers whose natural gas needs fluctuate daily. We determined that Gulf South did not sufficiently demonstrate that existing shippers would not be economically harmed if abandonment was approved. Since Gulf South made no commitment to keep its shippers economically whole following the primary terms of their contracts, we concluded that any shipper electing to exercise its right of first refusal (ROFR) would be required to pay a combination of interstate and intrastate rates that would likely include the costs of the abandoned facilities in both sets of rates.

11. We found that Gulf South did not support its argument that abandonment would eliminate a rate subsidy and provide it with a better opportunity to earn its allowed return on equity. We found that these economic issues would be better addressed in a section 4 rate proceeding; Gulf South subsequently submitted a section 4 application that included

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<sup>12</sup> *Id.* PP 91-94.

<sup>13</sup> *Id.* PP 56-69.

<sup>14</sup> *Id.* PP 70-99.

proposed revisions applicable to the subject facilities, and a settlement in the rate case was recently accepted by the Commission.<sup>15</sup>

12. Finally, we declined to consider Gulf South's request that we find following abandonment that the subject facilities would be exempt from Commission jurisdiction as Hinshaw pipeline facilities. Because we found the facilities still provide essential interstate transportation service, and thus denied abandonment, it was unnecessary to make a finding as to whether the facilities would qualify as Hinshaw pipelines pursuant to section 1(c) of the NGA following abandonment.

### **III. Discussion**

#### **A. Procedural Issues**

13. On February 2, 2014, Atmos Energy Corporation (Atmos) filed a motion seeking to submit an answer to Gulf South's request for rehearing. Section 385.213 of the Commission's regulations prohibits answers to requests for rehearing and Atmos has not established any need for an exception to this rule.<sup>16</sup> Accordingly, Atmos's motion to submit an answer is denied.

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<sup>15</sup> See the December 19 Order at PP 121-125, in which we observed that a section 4 rate proceeding would provide the Commission, Gulf South, and others the opportunity to examine not only the single operational factor of proportional throughput within a zone, but also "Gulf South's overall operations including, among other things, consideration of operational areas and constraint points, the factors the Commission considered in its last rate case." *Id.* P 122. Gulf South cites our above-noted observation in a section 4 rate application it submitted in October 2014 in Docket No. RP15-65. In its rate filing, Gulf South, *inter alia*, proposed to resolve what it describes as subsidized rates by "modifying its existing zone-gate rate design and placing the older, distribution-type transmission facilities [i.e., facilities Gulf South seeks to abandon in this section 7(b) proceeding] into a separate Local Zone so customers that utilize those facilities will pay the full costs associated with them consistent with the Commission's cost causation principles." Gulf South's NGA section 4 rate filing, at 9 (October 24, 2014). On December 18, 2015, the Commission accepted a settlement in Gulf South's rate proceeding, to become effective March 1, 2016. Letter order Approving Gulf South's September 25, 2015 Stipulation and Agreement of Settlement, *Gulf South Pipeline Co., L.P.*, 153 FERC ¶ 61,326 (2015).

<sup>16</sup> 18 C.F.R. § 385.213 (2015).

**B. Rehearing Request****1. Public Convenience and Necessity Standard**

14. Gulf South asserts that the December 19 Order applied an incorrect and impermissibly strict legal standard in denying the abandonment applications. It claims that the courts require the Commission “to consider adequately and fully all the factors relevant to an intelligent determination of the overall public interest” when evaluating an abandonment application under section 7(b) of the NGA.<sup>17</sup> Gulf South contends that, rather than examine all factors relevant to the public interest, the Commission erred by treating continuity of service as the primary, and essentially only consideration in assessing whether the public convenience and necessity permits abandonment of the subject facilities. Specifically, Gulf South alleges that our decision to deny abandonment was based primarily on whether firm shippers on the facilities would receive “identical service” following abandonment.<sup>18</sup>

15. Gulf South claims that the cases cited by the Commission to support its contention that continuity of service is the primary consideration in an abandonment proceeding are inapposite. It asserts that in *Gulf Oil Corp. v. FERC*,<sup>19</sup> the court affirmed a Commission order denying abandonment that cited *Transcontinental Gas Pipe Line Corp. v. FPC* (*Transco*) and noted that continuity of service was simply one factor among many to be weighed in evaluating an abandonment application.<sup>20</sup> In *Farmland Industries v. Kansas-Nebraska Natural Gas Co. (Farmland)*, Gulf South claims the court ruled that a natural gas company holding a certificate under section 7 of the NGA must obtain abandonment authorization from the Commission prior to terminating service.<sup>21</sup> Gulf South contends that because it is not attempting to terminate certificated service without Commission approval, *Farmland* “offers no support for the Commission’s position that ‘continuity of service’ should be the dispositive factor” governing its requested abandonment.<sup>22</sup>

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<sup>17</sup> Gulf South’s Request for Rehearing at 2 (Rehearing Request) (citing *Transcontinental Gas Pipe Line Corp. v. FERC*, 488 F.2d 1325, 1328 (D.C. Cir. 1973) (*Transco*)).

<sup>18</sup> *Id.* at 26, 30.

<sup>19</sup> 575 F.2d 67, 69-70 (3d Cir. 1978) (*Gulf Oil*).

<sup>20</sup> 488 F.2d 1325.

<sup>21</sup> 349 F. Supp. 670, at 680-81 (D.C. Neb. 1972), *aff’d* 486 F.2d 315 (8<sup>th</sup> Cir. 1973).

<sup>22</sup> Gulf South’s Rehearing Request at 23.

16. Gulf South alleges that the Commission's over-reliance on continuity of service creates an impossible standard, under which an interstate pipeline would never be allowed to abandon ongoing service to a non-interstate pipeline if a single firm shipper protests the proposed abandonment, regardless of the other factors affecting the public interest.<sup>23</sup> Gulf South complains that "the Commission did not point to any case in which the Commission allowed a pipeline to abandon service over the protest of a firm shipper unless the pipeline arranged for the protesting shipper to receive identical service following abandonment."<sup>24</sup> According to Gulf South, such a blanket rule elevates the interest of a single shipper above the overall public interest.

17. Gulf South maintains that the Commission's "overly-strict" standard for reviewing abandonment is contrary to the plain language of section 7(b) of the NGA, which states that a pipeline may abandon facilities if the Commission finds that "the present or future public convenience or necessity permit such abandonment."<sup>25</sup> Gulf South states that this is a less stringent standard than that set forth for a certificate of public convenience and necessity to construct new facilities under sections 7(c) and (e) of the NGA, which provide that the Commission must find that the proposed construction "is or will be required by the present or future public convenience and necessity"<sup>26</sup> In support of this argument, Gulf South relies upon *Conn. Dep't of Income Maint. v. Heckler*, in which the Supreme Court broadly stated that, when addressing questions of statutory interpretation, "courts should give effect, if possible, to every word that Congress has used in a statute."<sup>27</sup> Gulf South also points to *Amoco Prod. Co. v. Watson*, in which the court similarly stated that "[i]t is a familiar canon of statutory construction that, 'if possible, we are to construe a statute so as to give effect to 'every clause and word.'"<sup>28</sup>

18. We reject Gulf South's contention that the December 19 Order failed to consider all factors relevant to a requested abandonment. As we explained in that order, we evaluate abandonment applications on a case-by-case basis and consider all relevant

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<sup>23</sup> *Id.* at 27.

<sup>24</sup> *Id.* at 23-24.

<sup>25</sup> 15 U.S.C. § 717f(b) (2012).

<sup>26</sup> *Id.* at § 717f(e).

<sup>27</sup> 471 U.S. 524, 530 n.15 (1985).

<sup>28</sup> 410 F.3d 722, 733 (D.C. Cir. 2005), *cert. granted*, 547 U.S. 1068 (2006), *aff'd sub nom. BP Am. Prod. Co. v. Burton*, 549 U.S. 84 (2006) (internal punctuation and citation omitted).

factors, including the needs of Gulf South and its customers, the degree to which the subject facilities are utilized, and the economic impacts of abandonment on Gulf South and its customers.<sup>29</sup> In this case, while we treated continuity of service as the primary factor, we did not consider it as the only factor; we addressed each factor raised by Gulf South in support of its applications and found that Gulf South did not meet its burden of demonstrating that the public interest would be in no way disserved by the proposed abandonment.

19. We disagree with Gulf South's assertion that, in our analysis of its proposal, we gave too much weight to continuity and stability of service. As the court in *Michigan Consolidated* explained, "the fact that abandonment of public service requires Government approval symbolizes the special legal status and obligations of common carriers and public utilities. This includes an obligation, deeply embedded in the law, to continue service."<sup>30</sup> Our focus on continuity of service is consistent with this statutory purpose of NGA section 7(b). Contrary to Gulf South's claims, the decisions in *Gulf Oil* and *Farmland* support our statement in the December 19 Order that "precedent makes clear that there is a 'presumption in favor of continued certificated service' and that 'continuity and stability of service are the primary considerations' in assessing the public convenience and necessity" of a proposed abandonment.<sup>31</sup>

20. In *Farmland*, the court explained that "the proscription of abandonment without prior Commission approval was designed to ensure stability and continuity of service."<sup>32</sup> Similarly, in *Gulf Oil* the court recognized that there was a presumption in favor of continued service.<sup>33</sup> We disagree with Gulf South's statement that "over-reliance on 'continuity of service' creates an impossible standard, under which a pipeline would not be allowed to abandon ongoing service to a non-interstate entity if a single firm shipper

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<sup>29</sup> December 19 Order at P 46.

<sup>30</sup> *Michigan Consolidated*, 283 F.2d 204, 214.

<sup>31</sup> December 19 Order at P 91 (quoting *Tennessee Gas Pipeline Co.*, 137 FERC ¶ 61,105, at P 20 (2011) and P 128 (quoting *Northern Natural Gas Co.*, 135 FERC ¶ 61,048 (2011) (*MOPS*) (citing *Southern Natural Gas Co.*, 126 FERC ¶ 61,246 (2009) (*Southern*)).

<sup>32</sup> 349 F.Supp 670, at 680-81. See, e.g., *El Paso Natural Gas Co.*, 136 FERC ¶ 61,180 (2011); *Arlington Storage Co. LLC*, 132 FERC ¶ 61,171, at 61,860 (2010); *Tennessee Gas Pipeline Co.*, 131 FERC ¶ 61,127 (2010); and *Florida Gas Transmission Co., LLC*, 129 FERC ¶ 61,135 (2009).

<sup>33</sup> *Gulf Oil*, 575 F.2d 67, 69-70 (citing *Transco*, 488 F.2d 1325).



protests the abandonment.”<sup>34</sup> As we explained in the December 19 Order, in deciding whether a proposed abandonment is warranted, the Commission considers all relevant factors, but the criteria vary with the particular circumstances of each abandonment proposal. Whether we would deny abandonment because a single firm shipper protests would be based on the particular circumstances presented. In any event, the merits of maintaining service for a single shipper are not at issue here, as we are instead presented with protests from numerous shippers.

21. We reject Gulf South’s assertion that the Commission applied an “overly-strict standard” in denying abandonment. Gulf South’s abandonment applications were denied using the appropriate standard.<sup>35</sup> As an initial matter, Gulf South contends that Congress intended a more lenient approach for reviewing abandonment applications than for reviewing pipeline certifications. Gulf South argues that the use of the words “permit” under NGA section 7(b) and “require” under NGA sections 7(c) and (e) support its view that two different types of review were intended. Gulf South fails to provide relevant support for this distinction or effectively contest established precedent.<sup>36</sup> Gulf South merely cites to cases addressing general principles of statutory construction to support this claim. Moreover, Gulf South fails to articulate in what way our analysis was “overly strict” and inconsistent with NGA section 7(b). Accordingly, we maintain that the appropriate standard to be used in evaluating abandonment applications is that the public interest will in no way be disserved by the abandonment.

## **2. Gulf South’s Continuity of Service Commitments**

22. Gulf South states that the December 19 Order failed to give proper consideration to Gulf South’s continuity of service commitments following abandonment.<sup>37</sup> According to Gulf South, the Commission improperly dismissed Gulf South’s continuity of service

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<sup>34</sup> Gulf South’s Rehearing Request at 27.

<sup>35</sup> December 19 Order at P 129.

<sup>36</sup> Contrary to Gulf South’s assertion, in *Michigan Consolidated*, 283 F.2d 204, 214, the United States Court of Appeals found, on this point, that the word ‘permit,’ instead of ‘require,’ does not shift the burden to those opposing the application. An applicant for abandonment under section 7(b) of the Act has the burden of making the factual showing which will assure the Commission, charged with protecting the public interest, that that interest will in no way be disserved; just as the applicant under section 7(c) for a certificate to commence service must bear the burden of proving that that public interest will be served.

<sup>37</sup> Gulf South’s Rehearing Request at 26-31.

proposal because it does not provide service that is a mirror image of what would be provided under Commission jurisdiction both during the current contract term and indefinitely thereafter. Gulf South contends that this sets forth an “impossible standard ... under which an interstate pipeline could never abandon service to an intrastate pipeline because the intrastate pipeline could never meet the criteria of being subject to the Commission’s jurisdiction.”<sup>38</sup>

23. Gulf South claims that the December 19 Order improperly discounted the commitment made by Gulf South to coordinate with the Boardwalk Intrastates upon abandonment to ensure that service on the abandoned facilities would duplicate customers’ existing no-notice service. Gulf South committed to enter into operational balancing agreements (OBAs) with each Boardwalk Intrastate to protect shippers from a loss of local production, higher than anticipated demand, or load swings. Gulf South contends that the OBAs will allow it to support flexible deliveries to the Boardwalk Intrastates in order to meet customers’ needs, and that customers will not experience a material change in service throughout the remainder of the current terms of their contracts with Gulf South. In response to the Commission’s finding that Gulf South failed to explain how such an accommodation through an OBA, which customarily addresses operational imbalances at pipeline interconnections and not at downstream pipeline’s delivery points, would be accomplished, Gulf South states that the interconnections between Gulf South and the Boardwalk Intrastates would, in fact, be “pipeline interconnections” at which OBAs would be in place.

24. Gulf South also takes issue with the Commission’s discounting of its service commitments on the Boardwalk Intrastates on the grounds that there is no assurance that any accommodation with affiliates will be approved by the state commissions. According to Gulf South, the Commission failed to provide any reason why the operational agreements between Gulf South and the Boardwalk Intrastates would not meet state regulatory approval. In addition, Gulf South alleges that we ignored its commitment that both Gulf South and the Boardwalk Intrastates would continue to offer service after the end of the existing terms of shippers’ service agreements.

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<sup>38</sup> *Id.* at 27.

25. Finally, Gulf South asserts that the December 19 Order erred by relying on orders denying abandonment, including two Transco proceedings<sup>39</sup> and *Southern*,<sup>40</sup> it distinguishes as “materially different” from the present case.<sup>41</sup> Gulf South claims that unlike *Transco I* and *Transco II*, in which the pipeline made no provisions to keep the affected customers “economically whole” following abandonment, and *Southern*, in which the pipeline made no specific continuity of service commitments it has offered such assurances to its customers.

26. We disagree with Gulf South’s assertion that we improperly discounted its continuity of service commitments. As explained in the December 19 Order, we considered Gulf South’s service commitments and found them insufficient to ensure that its existing firm shippers would receive the same quality of service if abandonment was approved.<sup>42</sup> Contrary to Gulf South’s claim, the record shows that Gulf South’s proposal could have material and significant negative impacts on its existing customers. For instance, we found that Gulf South did not show that the no-notice service currently contracted for by firm shippers would be replicated after abandonment. We also explained that no-notice service is of particular importance because it enables customers to meet unexpected changes in peak service needs by allowing them to meet demand for natural gas without specifying a precise quantity to be scheduled for delivery.

27. We reject Gulf South’s contention that the December 19 Order created an “impossible standard” under which an interstate pipeline could never abandon service to an intrastate pipeline because the latter could never meet the criteria of being subject to Commission jurisdiction. We routinely authorize the abandonment of interstate pipeline facilities by sale to intrastate pipelines when we find the transfer to be consistent with the public convenience and necessity. In those cases, however, the Commission found that continuity and stability of service was not an issue, because there were no firm shippers on the facilities, or no firm shippers had protested,<sup>43</sup> or protesting firm shippers were

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<sup>39</sup> *Transcontinental Gas Pipe Line Corp.*, 103 FERC ¶ 61,118 (2003) (*Transco I*) and 110 FERC ¶ 61,337 (2005) (*Transco II*).

<sup>40</sup> *Transcontinental Gas Pipe Line Corp.*, 126 FERC ¶ 61,246.

<sup>41</sup> Gulf South’s Rehearing Request at 31.

<sup>42</sup> December 19 Order at PP 91-99.

<sup>43</sup> See, e.g., *ANR Pipeline Co.*, 139 FERC ¶ 61,238 (2012) (*ANR*); *Southern Natural Gas Co.*, 115 FERC ¶ 62,266 (2006) and *KN Interstate Gas Transmission Co.*, 78 FERC ¶ 61,045 (1997).

assured an adequate continuity of service.<sup>44</sup> In contrast, here there are existing firm shippers, and many of them protest the proposed abandonment, and the record shows that continuity and stability of service to firm shippers would be impaired if abandonment is approved.

28. We also disagree with Gulf South's claim that we improperly discounted its commitment to coordinate with the Boardwalk Intrastates to duplicate existing no-notice service. We found that, while Gulf South claimed that it committed to negotiate OBAs with the Boardwalk Intrastates to replicate no-notice service for the remaining terms of shippers' existing contracts, it did not explain how such an objective would be accomplished through an OBA, which as noted above, customarily addresses operational imbalances at pipeline interconnections, rather than at downstream pipelines' delivery points. Additionally, Gulf South's assertions that the Commission failed to provide any reason why the OBAs would not receive state regulatory approval, and ignored Gulf South and the Boardwalk Intrastates' commitment to continue to offer equivalent service at the end of shippers' contracts, are unavailing. Gulf South has the burden of proof in this proceeding, and it was not unreasonable for the Commission to discount the stated commitment to continue service when Gulf South has not yet filed its proposal, much less received approval by state regulators. Further, Gulf South does not address the fact that many firm shippers filed protests opposing the abandonment. Finally, Gulf South's commitment to replicate no-notice service fails to adequately address service beyond the primary terms of their contracts and would force shippers to look for service elsewhere, or to contract with both Gulf South for storage and with the respective Boardwalk Intrastate for transportation service.

29. Gulf South's assertion that the Commission erred in its December 19 Order by relying on *Transco I*, *Transco II*, and *Southern* because in those cases, the pipelines made no similar commitments to their customers is also without merit. As explained in the December 19 Order and above, Gulf South's commitment cannot ensure its shippers will

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<sup>44</sup> See, e.g., *Trunkline Gas Co., LLC*, 145 FERC ¶ 61,108 (2013) and *Transwestern Pipeline Co., L.L.C.*, 140 FERC ¶ 61,147 (2012) (*Transwestern*).

not be adversely impacted by the proposed abandonment,<sup>45</sup> particularly after the termination of the primary terms of their contracts. We found that any shipper electing to exercise its right of first refusal at the end of the primary contract term would be forced to pay higher “stacked” rates, since the costs of the abandoned facilities would likely be included in both sets of rates. As a result, we concluded that Gulf South’s commitments are insufficient to ensure that its current shippers would receive the same quality of service following abandonment.

### **3. Economic Considerations**

30. Gulf South alleges that we erred in our conclusion that economic issues would be more appropriately addressed in a section 4 rate proceeding.<sup>46</sup> Rather, Gulf South states that if it “can show that abandonment is in the public interest, the Commission must grant the abandonment even if the pipeline’s economic concerns could also be addressed in a section 4 rate case,”<sup>47</sup> noting that it “has exercised its business judgment and determined that abandonment, not a rate case, is the best way to address the serious economic issues on Gulf South’s system.”<sup>48</sup>

31. Gulf South claims that the Commission ignored the fact that a rate case will not solve the economic issues on Gulf South’s system. Gulf South asserts that because most of its core customers currently receive service under discounted or negotiated transportation rate agreements, a rate case and resulting rate increase would cause the customers currently paying maximum rates to exit Gulf South’s system in favor of less costly alternatives, leaving Gulf South unable to earn a reasonable rate of return.

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<sup>45</sup> See, e.g., the December 19 Order at 92:

If we approved Gulf South’s abandonment proposals, the Boardwalk Intrastates would provide service no longer subject to full Commission jurisdiction and the full panoply of open-access protections. Thus, the Boardwalk Intrastates would not be obligated to implement various terms and conditions of service that the Commission deems essential to its open-access regulatory regime, including procedures for allocation of capacity, capacity release mechanisms, flexible receipt and delivery points, and equal and timely access for all shippers to information relevant to the availability of open-access transportation services.

<sup>46</sup> Gulf South’s Rehearing Request at 31-35. See n.15

<sup>47</sup> *Id.* at 32.

<sup>48</sup> *Id.* at 10.

32. Gulf South states that we failed to consider that Gulf South's costs associated with the subject facilities are likely to rise to comply with the Pipeline and Hazardous Materials Safety Administration's (PHMSA) pipeline safety regulations. Gulf South maintains that as a result, it would be required to make capital expenditures to rehabilitate and/or replace its aging infrastructure before filing a rate case. If those costs are substantial, Gulf South suggests that shippers would be less inclined to renew their contracts, leaving it with a "stranded and uneconomic asset."<sup>49</sup>

33. While economic concerns may be a basis for approving abandonment under certain circumstances,<sup>50</sup> the December 19 Order explained why we found that Gulf South did not provide sufficient support for its assertion that abandonment should be permitted to eliminate a subsidy paid by mainline customers and provide Gulf South with a better opportunity to earn its allowed return on equity.<sup>51</sup> Although we "will defer to the pipelines' own business judgment" when we find "that a pipeline's proposed abandonment of particular facilities will not jeopardize continuity of existing natural gas transportation services,"<sup>52</sup> because we determined that abandonment would jeopardize shippers' continuity of service, we were not in a position to defer to Gulf South's preference for addressing economic issues in section 7(b) rather than section 4 proceeding. Thus, we reject Gulf South's claim that we erred by not addressing economic issues in this abandonment proceeding.

34. Equally unavailing is Gulf South's claim that we ignored "the fact" that a rate case will not solve the economic issues on Gulf South's system. The impact of a rate case on Gulf South's system will only be known after such a filing is made and resolved by the Commission.<sup>53</sup> Similar to our finding in *MOPS*,<sup>54</sup> if after an appropriate rate is

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<sup>49</sup> Gulf South's Rehearing Request at 34.

<sup>50</sup> For example, the Commission has authorized a pipeline to abandon a compressor station based, in part, on the fact that it would reduce costs on the system. But in that case, unlike this case, no shipper bearing the cost of the facilities protested the abandonment and the Commission found there were no continuity of service issues associated with the abandonment. *Panhandle Eastern Pipe Line Co., LP*, 141 FERC ¶ 61,119, at PP 24-35 (2012).

<sup>51</sup> December 19 Order at PP 121-129.

<sup>52</sup> *Transwestern*, 140 FERC ¶ 61,147 at P 13 (citation omitted).

<sup>53</sup> We noted in the December 19 Order at P 122 that Gulf South had not filed a section 4 general rate case since 1997. However, as described above in n.15, Gulf South has since done so and the Commission has approved a settlement establishing new transportation and storage rates.

established for service on the facilities, and customers leave the system for less costly alternatives as Gulf South anticipates, Gulf South could present such facts in support of a renewed application for abandonment.

35. The December 19 Order did not consider Gulf South's assertion that costs associated with the subject facilities are likely to rise to ensure compliance with PHMSA's pipeline safety regulations, as this issue was raised for the first time in Gulf South's request for rehearing. The Commission's long-standing policy is not to accept additional evidence at the rehearing stage of a proceeding, absent a compelling showing of good cause.<sup>55</sup> This is because other parties are precluded under Rule 713(d)(1)<sup>56</sup> from filing answers to requests for rehearing and introducing new material into the record at this stage would raise concerns of fairness and due process. Gulf South does not explain or justify why this additional information regarding PHMSA regulations should be admitted after the close of the record and after the issuance of a dispositive order in this proceeding. Accordingly, we reject the efforts of Gulf South to introduce supplemental evidence at the rehearing stage of this proceeding.

36. In any event, if we considered this new information, it would not change our ruling in the December 19 Order. We note that facilities which are not subject to our NGA jurisdiction, such as intrastate pipelines, may nevertheless be subject to PHMSA's 49 CFR Part 192 requirements. We further note, in response to Gulf South's concern that PHMSA compliance may diminish its approved rate of return, that in the event a company experiences an increase in costs – whether to meet regulatory obligations or for another reason – that company may seek to alter Commission-authorized rates in an NGA section 4 rate proceeding, or seek to alter NGA-exempt, state-authorized rates by submitting a request to a state agency.

#### **4. Operation of the Facilities as Hinshaw Pipelines Following Abandonment**

37. Gulf South contends that in evaluating its abandonment application, the Commission failed to adequately consider that following abandonment the subject facilities would operate as Hinshaw pipelines, pursuant to a regulatory regime contemplated by Congress and subject to state regulation. Gulf South maintains it was

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<sup>54</sup> 135 FERC ¶ 61,048.

<sup>55</sup> See, e.g., *Midwest Independent Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,178, at P 11 (2008) and *Nevada Power Co.*, 111 FERC ¶ 61,111, at P 10 (2005).

<sup>56</sup> 18 C.F.R. § 385.713(d) (2015). See, *supra*, barring Atmos from submitting an answer to Gulf South's Rehearing Request.

unreasonable for the Commission to conclude that abandonment in conjunction with continued operation as a Hinshaw pipeline was not warranted. Gulf South also objects to the Commission's failure to declare that the subject facilities would qualify as Hinshaw pipelines following abandonment.

38. Whether or not the subject facilities would operate as Hinshaw pipelines following abandonment does not determine whether abandonment is appropriate. We focus on the potential for customers to experience degradation in service post-abandonment, and here we found that the regulatory regime applicable to the facilities and their operation after abandonment could not ensure that current customers would continue to receive the same quality of service as is now provided by Gulf South.<sup>57</sup> In view of this finding, there was no cause to consider whether the facilities, following abandonment, would qualify as Hinshaw pipelines. The fact that jurisdictional facilities could qualify as Hinshaw pipelines does not compel us to permit the abandonment of such facilities when they are, as Gulf South's facilities are, part of an integrated interstate pipeline system.<sup>58</sup> Because the facilities and services at issue are subject to our NGA jurisdiction, Gulf South must show that existing customers "will in no way be disserved" by their abandonment.<sup>59</sup> For the reasons discussed herein and in the December 19 Order, we conclude that Gulf South has failed to make such a showing.

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<sup>57</sup> For example, as noted in the December 19 Order at 92:

If we approved Gulf South's abandonment proposals, the Boardwalk Intrastates would provide service no longer subject to full Commission jurisdiction and the full panoply of open-access protections. Thus, the Boardwalk Intrastates would not be obligated to implement various terms and conditions of service that the Commission deems essential to its open-access regulatory regime, including procedures for allocation of capacity, capacity release mechanisms, flexible receipt and delivery points, and equal and timely access for all shippers to information relevant to the availability of open-access transportation services.

<sup>58</sup> See the December 19 Order at P 55 (citing *Oklahoma Natural Gas Co. v. FERC*, 28 F.3d 1281, 1287 (D.C. Cir. 1994), in which the court rejected the argument that the Commission did not have jurisdiction to authorize an interstate pipeline to construct and provide transportation over a lateral that would deliver gas production from wells in Oklahoma to an electric generation plant in Oklahoma because the lateral would be providing local distribution service for which the NGA reserves jurisdiction to the states. The court found that the Commission's jurisdiction attaches to any facilities constructed by an interstate pipeline and used as part of its integrated system.

<sup>59</sup> *Id.*



## 5. Rate Impact of Abandonment

39. Gulf South claims that we gave improper weight to the fact that customers' rates are likely to increase as a result of abandonment. According to Gulf South, the Commission's finding ignored the fact that customers transporting gas on the identified facilities pursuant to negotiated rate agreements are only guaranteed those rates through their current contract terms, and customers paying the maximum applicable rate could see an increase in rates at any time during their contract term. Moreover, Gulf South asserts that shippers are not guaranteed their existing rates indefinitely, and are likely to see a rate increase when Gulf South files its next section 4 rate case. Thus, Gulf South states that the likelihood of a rate increase following abandonment is immaterial in assessing the public interest of the proposed abandonments because rates are likely to increase even if abandonment is denied.<sup>60</sup>

40. Gulf South also alleges we erred by holding that "any shipper electing to exercise its right of first refusal would be required to pay a combination of interstate and intrastate rates for service that would likely include the costs of the abandoned facilities in both sets of rates."<sup>61</sup> Gulf South claims we failed to consider that, though the costs of the facilities will not be removed from Gulf South's cost of service after abandonment, Gulf South would no longer collect revenues associated with volumes flowing on those facilities, as all such rates would be collected instead by the Boardwalk Intrastates.<sup>62</sup>

41. Gulf South's argument is misplaced. We recognize that Gulf South's customers could be subject to a rate increase in the future, with or without abandonment. However, our concern in the December 19 Order was that Gulf South's customers were likely to experience a rate increase through the stacked rates described above, if abandonment was approved. We explained that all existing firm contracts on the subject facilities include a

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<sup>60</sup> Gulf South's Rehearing Request at 39. We note that parties to Gulf South's recent uncontested rate settlement include customers that contested this proposed abandonment.

<sup>61</sup> *Id.* at 39-40 (citing the December 19 Order at P 105).

<sup>62</sup> *Id.* at 40. Gulf South adds that it will not obtain any undue benefit from the abandonment, "especially since ... existing rates do not include the approximately \$2.1 billion in system additions" put in place "since its last rate case." *Id.* We note that the extent to which Gulf South has added or subtracted facilities from its system since its last rate case is irrelevant to our review of whether abandonment is warranted. Thus, while the question of whether Gulf South's current rates accurately reflect its current rate base is an appropriate issue for a section 4 rate proceeding, that question has no bearing on the outcome of this section 7(b) proceeding.

right of first refusal, which gives shippers the option to avoid pre-granted abandonment and continue service at the conclusion of their primary contract terms under certain conditions. Gulf South has made no commitment to keep its shippers economically whole after the termination of their primary contract terms.<sup>63</sup> Moreover, Gulf South has not yet entered into contracts or otherwise negotiated the specifics of its stated commitment to keep shippers “economically whole” after abandonment. In the December 19 Order, we found that any shipper electing to exercise its right of first refusal would be required to pay a combination of interstate and intrastate rates for service that would include the costs of the abandoned facilities in both sets of rates. The fact that Gulf South will no longer collect the revenues associated with those facilities does not change the fact that post-abandonment, customers would be subject to higher stacked rates.

**6. Whether the Facilities are Integral to Interstate Commerce as a Result of Material Changes to Natural Gas Markets**

42. Gulf South claims that the December 19 Order gave improper weight to the fact that its facilities are no longer integral to the interstate transportation of gas, primarily due to market impacts resulting from increased production attributable to gas extracted from shale rock.<sup>64</sup> Gulf South believes that the rapid development of shale gas supply in new regions has caused gas prices to fall, increased competition in the interstate transportation market, and adversely affected the demand for, and the value of, Gulf South’s transportation services. According to Gulf South, the Commission erred in finding that the subject facilities are essential to interstate service simply because a number of shippers hold firm contract entitlements and that some existing shippers protested Gulf South’s requested abandonment.<sup>65</sup> Gulf South faults the Commission’s analysis for finding that a facility is integral to an interstate system simply because it provides some interstate service, regardless of the level of that service or whether the same service could be provided by the same facility functioning as a Hinshaw pipeline.

43. The December 19 Order addressed and rejected Gulf South’s assertions that the subject facilities are no longer integral to interstate commerce.<sup>66</sup> While shale gas

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<sup>63</sup> Current contracts for service that utilize the facilities have varying expiration dates. Some contracts expired in early 2014 and others have expiration dates as late as 2020; the majority of contracts expire in 2016. *See* Gulf South’s June 4, 2013 Response to the May 15, 2013 Data Request.

<sup>64</sup> Gulf South’s Rehearing Request at 32-33 and 40.

<sup>65</sup> *Id.* at 41-42 (citing the December 19 Order at P 129).

<sup>66</sup> December 19 Order at PP 54-55.

development may have impacted the demand for services on Gulf South's system, certain shippers holding firm entitlements on the facilities Gulf South seeks to abandon opposed the abandonment, evidencing their desire to continue to receive service on the facilities under the existing regulatory regime. We do not dispute that the facilities in question will be physically capable of providing the same service to existing shippers if the facilities are deemed non-jurisdictional. However, shippers entered contracts relying on their expectation that Gulf South would provide service under Commission-approved terms and conditions at just and reasonable rates. Because we found the potential harm to existing shippers outweighed the benefits that could be realized, we denied abandonment. As discussed in the December 19 Order, we have consistently denied abandonment under similar circumstances.<sup>67</sup>

**7. Whether the Facilities Could be Utilized More Efficiently as Hinshaw Pipelines**

44. Gulf South contends that the Commission failed to give proper consideration to the fact that its facilities could function more efficiently as Hinshaw pipelines subject to state regulation, and could provide service not provided by interstate pipelines, including bundled sales and transportation. According to Gulf South, the Commission improperly rejected its argument based on the fact that the proposed abandonments were protested by firm shippers currently utilizing the facilities. By focusing on the "narrow interests" of these shippers, Gulf South claims that the Commission did not properly consider the needs of the "overall market," and failed to consider that the facilities are substantially underutilized, that customers using these facilities receive a rate subsidy from other Gulf South customers, and that abandonment would allow Gulf South to better align the costs and services on its interstate system.<sup>68</sup>

45. Gulf South has not supported its claim that the subject facilities could be more efficiently used as Hinshaw pipelines following abandonment. As the December 19 Order noted, Gulf South's assertion that the facilities could be more efficiently used

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<sup>67</sup> See *Transco I*, 103 FERC ¶ 61,118 at P 8-10; *Transco II*, 110 FERC ¶ 61,337 at P 26-34; and *Southern*, 126 FERC ¶ 61,246 at P 38-45.

<sup>68</sup> Gulf South's Rehearing Request at 42-43. In support of its argument, Gulf South cites *ANR*, 139 FERC ¶ 61,238 at P 32, also *Felmont Oil Corp.*, 33 FERC ¶ 61,333, at 61,557 (1985), in which the Commission explained that the "real change from the past will be a shift in the identification of the public interest, from the interest of only specific customers to the interests of the market as a whole, and in the determination of how the public's needs are best served."

following abandonment was disputed by customers that currently rely on the facilities.<sup>69</sup> Specifically, the loss of no-notice service as currently provided by Gulf South would be detrimental to LDCs that serve core residential and commercial customers whose natural gas needs fluctuate on a daily basis. The firm transportation service, as envisioned under the Boardwalk Intrastates' draft Standard Operating Conditions, would be a point-to-point transportation-only service, reducing firm shippers' operational flexibility to nominate an increase in deliveries as needed. We affirm our finding that Gulf South failed to satisfy its burden of demonstrating that abandonment will not have a negative impact on its existing firm customers, either economically or in terms of quality of service.

## **8. Elimination of a Rate Subsidy**

46. Gulf South takes issue with the December 19 Order's finding that it did not support the claim that mainline shippers subsidize services on the subject facilities, and that this subsidy would be eliminated by abandonment. Gulf South claims that it offered sufficient evidence of a subsidy by showing that for each of the facilities it proposed to abandon, the volume of gas transported is lower, as a percentage of Gulf South's overall throughput, than would be expected based on the percentage of pipeline miles each facility occupies, when compared to the total pipeline miles of Gulf South's system.<sup>70</sup> Gulf South also refers to the affidavit of David Haag, which shows the hypothetical stand-alone rates calculated for each set of the subject facilities are more than the maximum recourse rate in each of its zones. According to Gulf South, this is evidence that services on those facilities are subsidized by shippers that do not use them. Gulf South contends that the Commission did not refute this evidence, but only stated that it could not determine whether the method used to establish Gulf South's current rates "no longer fairly matches cost incurrence with cost responsibility based on one operational factor (i.e., proportional throughput within a zone) as Gulf South claims."<sup>71</sup>

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<sup>69</sup> We clarify that customers', and the Commission's, objection to operating the subject facilities as Hinshaw pipelines does not reach the issue of efficiency, but instead focuses on the different assurances offered to customers under the regulatory regimes of the NGA, the Natural Gas Policy Act, and state and local authorities.

<sup>70</sup> *See, e.g.*, Gulf South's Rehearing Request at 44-45: "While the Mississippi Facilities represent 7% of the total miles of pipeline facilities that make up the overall Gulf South system, the volumes transported on the Mississippi Facilities represent only a fraction, 0.55%, of Gulf South's overall throughput."

<sup>71</sup> December 19 Order at P 122.

47. Gulf South states that it provided this information to the Commission in order to demonstrate the existence of a subsidy, and not for the Commission to evaluate cost-allocation along the system. Gulf South claims that this information demonstrates that Gulf South's mainline customers bear the additional costs associated with maintaining the subject facilities as a part of Gulf South's interstate pipeline system, and that this subsidy would be eliminated by abandonment. Gulf South asserts that the Commission erred by not considering this benefit to the public interest.

48. Gulf South also asserts that the Commission improperly disregarded the no-subsidy test in its policy statement regarding the certification of new facilities.<sup>72</sup> Gulf South maintains that if it proposed a new project with the level of throughput and "the existence of the subsidy that is currently being provided" on the subject facilities, the Commission would reject the project.<sup>73</sup> Gulf South insists that "[i]f continued service is only possible with a rate subsidy or a loss by the pipeline, this should be a factor that weighs in favor of abandonment."<sup>74</sup>

49. Contrary to Gulf South's assertion, we specifically addressed Gulf South's claim that abandonment would eliminate a subsidy borne by its mainline shippers. As explained in the December 19 Order, costs are allocated on the Gulf South system using a zone gate methodology, which the Commission approved as part of a contested settlement. Contrary to Gulf South's claim, we specifically addressed the evidence put forth by Gulf South to support its assertion that mainline shippers were subsidizing services on the subject facilities, and explained why this evidence was not sufficient to demonstrate that services on these facilities are subsidized by other customers. The Commission properly found that Gulf South did not meet its burden of demonstrating the existence of a subsidy, much less demonstrating that such a subsidy could be eliminated by the proposed abandonment.

50. Gulf South's argument that the Commission improperly disregarded Gulf South's reliance on the no-subsidy test in the Certificate Policy Statement is equally unavailing. In these proceedings, Gulf South proposes to abandon facilities that are already built and currently provide service to firm shippers. The Certificate Policy Statement applies only

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<sup>72</sup> *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999) (Certificate Policy Statement), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000).

<sup>73</sup> Gulf South's Rehearing Request at 47.

<sup>74</sup> *Id.*

to new construction and is not applicable to assessing requests to abandon existing facilities and services.

## 9. Competitive Alternatives

51. Gulf South alleges that the December 19 Order failed to engage in reasoned decision-making by disregarding evidence that customers utilizing the subject facilities would have competitive options available to them as a result of robust intrastate pipeline markets.<sup>75</sup> Gulf South states that it provided maps in its applications showing the alternative interstate and intrastate pipeline systems competing with Gulf South in each of the regions where it proposed to abandon facilities. Gulf South claims that a number of these pipeline systems would be available as a reasonable service alternative to Gulf South's system, should shippers, following abandonment and the end of their contract terms, choose not to continue to be served by the Boardwalk Intrastates.

52. Gulf South claims that the December 19 Order failed to consider alternative transportation options available to Gulf South's shippers following abandonment, despite the fact that alternatives are relevant to how the proposed abandonments would affect the market as a whole. In support of its argument, Gulf South states that in denying abandonment authority in *MOPS*, the Commission was heavily influenced by the fact that there would be no transportation alternatives for a significant portion of the gas on the system, and that the existence of such alternatives is a distinguishing factor in the present case.

53. Gulf South also states that the December 19 Order ignored the fact that protesting shippers on Gulf South's system do not currently utilize, and in some cases have never utilized, all of the services specified in the December 19 Order and in Gulf South's tariff.<sup>76</sup> Gulf South claims that the Commission did not acknowledge this factor when considering Gulf South's commitment to replicate and offer equivalent service following abandonment. According to Gulf South, all services that shippers currently use will continue to be available following abandonment.

54. Contrary to Gulf South's claim, the fact that there are other interstate and intrastate pipeline systems in the regions where Gulf South proposes to abandon its facilities does not compel the Commission to grant abandonment authorization, particularly in the face of evidence that Gulf South's existing shippers do not view those alternatives as equivalent to the service they currently receive from Gulf South. Gulf South has made no showing that its existing shippers have interconnections with these pipelines, that these

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<sup>75</sup> *Id.* at 48-51.

<sup>76</sup> *Id.* at 49.

pipelines have available capacity, or that those pipelines' services and/or rates are comparable to Gulf South's. As we have discussed, and as reflected in existing customers protests, although alternatives to Gulf South's service may be available, there is no assurance that a replicated service would cost customers the same and offer the same operational flexibility, reliability, regulatory protections, and remedies.

#### 10. Conditional Authorization

55. Finally, Gulf South states that the December 19 Order errs by denying abandonment rather than conditioning abandonment on Gulf South meeting its continuity of service commitments.<sup>77</sup> Gulf South asserts that its continuity of service commitments are sufficiently concrete and should have been given greater weight in the Commission's consideration of the overall public interest. However, to the extent that the Commission was concerned with the level of protection afforded by Gulf's South's commitments, Gulf South claims that the Commission should have "fine-tuned" the abandonment proposals and conditioned abandonment on Gulf South's implementation of additional protections rather than denying the abandonments outright.

56. As the courts have explained, in considering the criteria for abandonment under section 7(b) of the NGA, two important principles apply: first, a pipeline which has obtained a certificate of public convenience and necessity has an obligation, deeply embedded in the law, to continue service; and, second, the burden of proof is on the applicant to show that the public convenience and necessity permits the requested abandonment.<sup>78</sup> In the December 19 Order, we addressed each of Gulf South's continuity of service commitments on the Boardwalk Intrastates and found that they were insufficient to show that the public interest would not be disserved by the abandonments. This analysis fulfills the Commission's statutory obligation under NGA section 7(b) and no further justification for our denial of the requested abandonment is required.<sup>79</sup>

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<sup>77</sup> *Id.* at 51-53.

<sup>78</sup> *See, e.g., Michigan Consolidated*, 283 F.2d 204, 214.

<sup>79</sup> While Gulf South contends that the Commission can hold an interstate pipeline to its commitments with respect to the provision of service by a non-jurisdictional facility, the case it relies on, *Sunoco, Inc. (R&M) v. Transcontinental Gas Pipe Line Corp.*, 111 FERC ¶ 61,400 (2005), involves the Commission's enforcement of a jurisdictional settlement agreement and thus does not apply here.

The Commission orders:

Gulf South's request for rehearing of the December 19, 2013 Order is denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.